Service Date: December 21, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Proposed	)	UTILITY DIVISION
Extension of the Transition Period	)	
Under Title 69, Chapter 8, MCA,	)	DOCKET NO. D2000.10.177
the "Electric Utility Industry	)	
Restructuring and Customer Choice Act."	)	ORDER NO. 6314

ORDER EXTENDING TRANSITION PERIOD

Background

1. On October 27, 2000 the Montana Public Service Commission (Commission) issued a request for comments on a proposal to extend the end of the transition period from July 1, 2002 to July 1, 2004 pursuant to its authority granted in § 69-8-201, MCA. The Commission explained that it could justifiably determine that absent an extension of the transition period, customers would be disadvantaged on July 1, 2002 due to the lack of competitive electricity supply markets.

2. The following submitted comments which are summarized below: Montana Office of the Northwest Power Planning Council (NPPC), Montana Consumer Counsel (MCC), Montana Power Company (MPC), Department of Environmental Quality (DEQ), Montana League of Cities and Towns (LCT), PPL Montana (PPL), Natural Resources Defense Council (NRDC), Commercial Energy (CE), AARP, Montana School Boards Association (MSBA), Montana Electric Cooperatives Association (MECA) and Malmstrom Air Force Base (MAFB), and several members of the general public. Generally, none of the commenting parties opposed the concept of extending the transition period. However, there were different opinions with respect to the specific issues of cost recovery and the structure of default service and choice in the extended transition period.

Summary of Comments

Northwest Power Planning Council

3. NPPC commented that extending the transition period by itself might neither benefit nor harm customers. NPPC stated that it is necessary to implement policies that permit the default supplier to acquire the most advantageously priced electricity supply package and properly signal demand-side responses. One way to dampen price volatility is to give the default supplier greater load certainty, which would allow the default supplier to build a more diversified load portfolio of longer and shorter contract lengths. NPPC supported a phase-in approach during an extended transition period with predetermined time frames. NPPC stated that the Commission should minimize the risk to the default supplier of recovering power purchase costs that attempt to provide a balanced portfolio. MPC's customers will receive a small amount of BPA power. NPPC stated that the benefits of this power should be applied equally to all residential and small farm customers. NPPC asserted that the Commission should develop meaningful customer education and pilot programs.

Montana Consumer Counsel

4. MCC stressed that the existence of default supply service for small customers is not linked to the transition period. The Commission has designated MPC as the default supplier for small customers in Administrative Rules of Montana, ARM 38.5.6007. MCC stated that MPC's default service obligation does not end when the transition period ends. MCC did not think there is anything to gain by implementing a structured phase-in to customer choice in the extended transition period and recommended that choice should remain available to all customers. MCC stated that it would be reasonable to establish a periodic power cost tracking mechanism to recover the costs of providing default supply. The Commission should declare that a bid process is the preferred approach to acquiring default supply, but MPC should not be so constrained that the default price is unnecessarily increased. The Commission should apply a prudence standard in reviewing default supply costs. The Commission should not require any specific resource portfolio or contract term, but may want to establish an outer limit on the length of contracts. Contracts should be assignable in case an alternative default supplier is selected. The Commission should honor prudently incurred default supply costs in order to reduce the potential for creating additional stranded costs. MCC stated that extending the transition period does not affect the small buyers cooperative.

Montana Power Company

5. MPC commented that extending the transition period would help Montana move toward workably competitive electricity supply markets for small customers. According to MPC, it is important to designate a default supplier and ensure that it receives full recovery of costs incurred to provide default supply. MPC did not support implementing a structured phase-in to customer choice. MPC believed that all customers should continue to have the right to choose. MPC asserted that a requirements contract could accommodate whatever default load exists, regardless of whether a phase-in is used.

6. MPC provided a list of principles designed to fairly compensate a default supplier and ensure reliable supply at competitive prices. These principles include using a periodic cost tracking mechanism to recover costs. All default supply costs would be included in the tariff so that it is comparable to competitive supply offers, including a “value-added service fee.” Commodity and ancillary services acquired through a competitive bidding process would be automatically recoverable in the default service rate. Commodity and ancillary services not acquired through a competitive bidding process would be subject to a limited prudence review.

7. MPC stated that the Commission should not specify the structure of the power supply portfolio, and should depend on the expertise of the default supplier. MPC recommended that the term of its supply obligation be determined so that MPC can plan supplies for that period. The Commission should not require default suppliers to enter into supply contracts for fixed terms, but grant flexibility to enter contracts of differing lengths and take advantage of competition, supplier preferences, etc.

8. On how the Commission can best assure that customers get the most affordable price during the extended transition period, MPC asserted that the problem is that the lowest price cannot be determined prospectively, but supply commitments do need to be made prospectively. MPC stated that the Commission must act on everything prospectively. A full requirements contract may not give customers the lowest price during the extended transition period, but it provides certainty. MPC believed this result would be acceptable and would help markets develop.

9. MPC stated that if the statutory limitation on default suppliers serving customers 100 kW or greater applies to MPC, then this law should be changed to allow MPC to continue to serve customers that have not made a choice.

10. MPC recommended that the Commission not address the issue of large customers who were automatically eligible for choice on July 1, 1998.

Department of Environmental Quality

11. DEQ stated that it does not object to the Commission extending the transition period at this time, but urged the Commission to be cautious in looking for solutions. DEQ stated that once MPC's buyback contract with PPL expires, if market prices remain at current levels, customers will experience higher electricity prices with or without an extension of the transition period. DEQ noted that the most likely reason that competition has not widely developed in Montana is the rate moratorium. However, this does not mean that competitive suppliers will not be interested in, or capable of, competing when the price cap is removed. DEQ asserted that another crucial part of efficient markets is the ability for customers to adjust their consumption based on the incremental cost of that consumption.

12. According to DEQ, one of the best things the Commission could do is speed up the deregulation of metering and the installation of real time meters. DEQ commented that if a customer has not chosen a competitive supplier by the end of the transition period, the default supplier would serve that customer. If MPC is the default supplier, extending the transition period makes no difference. MPC would buy power in the market to serve customers at regulated, cost-based rates that recover the cost of supply. DEQ recommended that the Commission not implement a structured phase-in to customer choice. If competitive suppliers enter the market after the rate cap expires, they should be able to compete for all customers.

13. DEQ stated that the real issue is finding a source of supply for an uncertain load of uncertain duration in a market that appears very "tight." Relying on short-term spot markets exposes customers and MPC to excessive volatility. Trying to reduce volatility by locking in price also involves risk. Long-term contracts carry risks that some customers will leave or that changes in market prices will lead to charges of imprudence. The Commission must provide MPC a reasonable expectation that it will recover its costs, while not undermining the intent of SB 390. DEQ stated that MPC should be allowed to recover prudently incurred costs through a tracking mechanism. A bidding process for acquiring power supplies would be appropriate, but the Commission should not restrict MPC to this process. MPC must use methods that mitigate and balance risks and costs. The Commission should not require MPC to implement any specific supply portfolio or enter contracts of any specific term.

14. DEQ maintained that no legislative changes are necessary for the Commission to extend the transition period. There is nothing for the Commission to address with respect to industrial customers because after July 1, 2002 all customers will face similar market prices. The Commission's proposal to extend the transition period does not affect the buying cooperative because the Commission could still designate an alternative to MPC as the default supplier, even if the transition period is extended.

Montana League of Cities and Towns

15. LCT asserted that on July 1, 2002, there will not have been any real development of customer choice. Two hundred ninety thousand MPC customers will be nonchoice customers, and there will be no real alternative for customers to switch to alternative suppliers. LCT stated that the Commission should extend the transition period for two years to allow a reasonable opportunity for a default supplier to obtain the most attractive supply resources available. LCT stated that it is important to allow customers that exercise choice during the extended transition period to have a full opportunity to return to default service. LCT advised seeking legislative extension of the transition period to July 2006.

16. LCT opposed a structured phase-in to customer choice. Open enrollment provides equitable access for all customers to alternative suppliers and does not prejudge how retail markets might develop. LCT stated that an electricity supply cost tracking process similar to existing gas cost tracking mechanisms would be a prudent way to address cost recovery for default supply costs during the extended transition period. The reasonableness of the acquisition strategy and results must remain subject to PSC regulation. LCT stated that the designated default supplier should use a competitive RFP process to secure necessary supply resources. LCT opposed Commission action specifying any particular structure for the power supply portfolio or contract length. LCT stated increasing the size of customers eligible for default service to more than 100 kW would require legislative action.

17. On the issue of the industrial customers' situation, LCT stated that loads under 1,000 kW should be allowed to remain on utility service or return to utility service throughout the transition period. The current tariff provision prohibiting customers with loads greater than 300 kW from returning to utility service should be removed.

18. LCT stated that while the proposal to extend the transition period does not necessarily foreclose the buying cooperative from applying to be the default supplier, related

issues have been in limbo since May 2000. LCT recommended that the Commission establish the standards by which alternative default supplier could be designated.

Commercial Energy

19. According to CE, the problem the Commission should be addressing is whether competitive suppliers will be able to offer electricity to MPC's retail customers at rates competitive with default service, which cannot be known until the marketplace knows what the default service prices are and the procedures for developing them. CE stated that it is premature to extend the transition period and require MPC to be the default supplier. CE stated that first the Commission should finalize the rules and procedures for the provision of default service.

20. CE supported a structured phase-in to customer choice. According to CE, "certainty is the key to price and supply risk management." Supply costs will be higher if the default supplier has no certainty with respect to its volume or customer obligations. CE indicated that a phase-in, together with use of mass media and a Commission website tracking "gauge," could stimulate customer choice.

21. CE stated that all costs incurred by the default supplier to acquire supplies should be allowed full cost recovery. A tracking mechanism should used to deal with imbalance issues, e.g., power sold back to the market or additional power bought from the market. Multiple contracts for varying terms and price options would be the best way to acquire default supply at the lowest cost. Some mix of short and long-term contracts, some fixed and some floating prices, will make the best portfolio, depending on the amount of risk deemed acceptable to pass on to customers. The Commission should not require the default supplier to enter contracts of any specific term. To help achieve an affordable price during the extended transition period, CE recommended assuming the QF contracts.

22. CE stated that industrial customers who went to choice could be given the option of returning after July 1, 2002, if the Commission extends the transition period based on a finding of insufficient competition. CE maintained that the buying cooperative is irrelevant to this process. Other issues CE stated should be addressed include cross-subsidies from utility functions to default supply functions, demand-side management, real-time metering, billing and Commission sponsored education.

PPL Montana

23. PPL endorsed the proposal to extend the transition period because it would designate a default supplier for the extended transition period. PPL urged the Commission to conclude the default supplier rulemaking.

Natural Resources Defense Council

24. NRDC recommended that the Commission require default service to include 5 percent renewable portfolio standard and a separately priced green product option for customers willing to pay a premium. NRDC stated that the Commission should resume work on the default supplier designation process and should issue designation rules as soon as possible. NRDC stated that it does not object to extending the transition period and added that such an extension only applies to business customers over 100 kW who were not covered by the default supply statutes enacted as Senate Bill 406.

AARP

25. AARP supported the Commission's proposal to extend the transition period. AARP urged the Commission to facilitate the development of competition in the residential and small business customer markets through the use of aggregation. AARP recommended that the Commission focus on consumer education both during and after the transition period and use a consumer advisory board to help develop the education program.

Montana School Boards Association

26. MSBA supported the proposal to extend the transition period. MSBA recommended that the Commission ensure that customers who have already exercised choice are not penalized for deciding to move to choice if the transition period is extended. Customers who exercised choice should have all options open to them during the period between July 1, 2002 and July 1, 2004.

Montana Electric Cooperatives Association

27. MECA commented that MPC should continue to hold the default supplier obligation during an extended transition period. MECA stated that cooperative utilities have the obligation under the law to be the default supplier in their service territories, and there is no justification for treating investor-owned utilities differently.

Montana Electricity Buying Cooperative

28. MEBC stated that the Commission should not take actions that constrain its options. The Commission must regulate default suppliers until workable competition has developed for residential and small business customers with average monthly demand less than 100 kW, which may be after the end of the transition period. MEBC stated that the Commission should investigate the potential impacts of extending the transition period on default supply. MEBC expressed concern that there may be unintended consequences unless there is a process that allows the Commission to interact with interested parties.

Malmstrom Air Force Base

29. MAFB recommended that the Commission use a prudence test under all circumstances to review the costs that MPC proposes to include in the default supply rate. MAFB disagreed with MPC's proposal that costs incurred through a competitive bid process should be automatically allowed in rates. The cost recovery mechanism should provide MPC an appropriate incentive to keep its costs down.

Public comments

30. The Commission received comments from several members of the general public, including David S. Gleason, Clarence Rule and Gus Coolidge. These comments supported the proposal to extend the transition period.

Commission Decision

31. Pursuant to § 69-8-201(2), MCA, the Commission has the discretion to determine whether the deadline for the transition to choice may be extended from July 1, 2002, up to but not later than July 1, 2004. The Commission's determination must be based on a finding of one or more of the following: (1) implementation would not be administratively feasible; (2) implementation would materially affect the reliability of the electric system; or (3) Montana customers would be disadvantaged due to the lack of competitive electricity supply markets.

32. The Commission finds that it is appropriate and necessary to extend the end of the transition period from July 1, 2002 to July 1, 2004. Certain customers could be disadvantaged due to the lack of competitive electricity supply markets if the transition period is not extended. Although the Commission firmly established MPC as the default supplier through a rule (ARM 38.5.6007), limitations placed on the default supplier by Senate Bill 406 (1999) mean that

on July 1, 2002, a substantial number of MPC customers would not qualify for default service.[1] In extending the transition period, the Commission is authorized by § 69-8-210(2), MCA to establish cost-based electricity supply prices, based on market purchases by the utility, for all customers that do not have a choice of, or have not yet chosen, an electricity supplier. Customers with loads of 100 kilowatts or more would, therefore, be eligible for regulated supply service from MPC until July 1, 2004. The Commission determines that extending the transition period could provide important customer protection after July 2002, given the status of electricity supply markets in Montana and uncertainty over how markets will develop once the rate moratorium expires.

33. For residential and small business customers, the single active licensed competitive supplier serving this customer segment recently decided to exit the market temporarily. The level of rate moratorium prices and a demand-supply imbalance in the Northwest region that is projected to persist for several years make it unlikely that retail electricity supply markets will be workably competitive on July 1, 2002. Although the rate moratorium will expire on July 1, 2002, the Commission cannot predict how markets will evolve thereafter. The Commission finds that it should immediately focus on ensuring that customers continue to have a reliable source of electricity supply, are protected from monopoly prices, and have access to the most affordable market-based prices. Until the Commission determines that retail supply markets are workably competitive, regulated electricity supply service must be provided.

34. Extending the transition period sooner rather than later facilitates the Commission's ability to protect customers. In order to secure affordable, reliable electricity supplies, MPC needs to know with as much certainty as possible what its obligations will be on July 1, 2002. It will take time to develop and approve underlying processes and policies that provide for full and fair recovery of all reasonable costs MPC incurs to provide regulated supply service during the extended transition period, and to conduct the necessary resource solicitations to build a comprehensive supply portfolio. The Commission hopes that extending the transition period at this time will provide a catalyst for quickly addressing these issues.

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[1] Section 69-8-416, MCA, prohibits a default supplier from serving customers with an average monthly demand of 100 kilowatts or more. MPC currently serves approximately 1,200 customers with loads of 100 kilowatts or more. These customers have a combined load of about 130 MW.

35. The written comments submitted in this proceeding indicate that there is widespread support behind the Commission's proposal to extend the transition period now.

36. MPC should submit a compliance filing on or before January 19, 2001, outlining how it intends to fulfill its electricity supply obligations. The compliance filing should address the following issues:

(1) Cost recovery. MPC should propose a method that allows it to recover all costs reasonably incurred in meeting its supply obligations during the extended transition period while also accommodating a sufficient opportunity for the Commission to fulfill its obligation to ensure that regulated electricity supply prices during the extended transition period are reasonable and in the public interest. The Commission will consider a performance-based cost recovery method but MPC should provide a thorough discussion of possible performance measures if it proposes performance-based pricing.

(2) Affordability. MPC should describe its plans for providing the most affordable electricity supply service possible for nonchoice customers in the extended transition period and balancing with that goal continued progress toward workable competition and meaningful customer choice. Included in this description should be a reasoned discussion of the tradeoffs associated with creating a more certain load size/shape by establishing a structured phase-in to customer choice in order to achieve a better supply price. MPC should discuss how it would mitigate the risks of load variability and uncertainty.

(3) Value-added service fee. MPC should fully justify the basis for and amount of any value-added service fee it proposes to charge. MPC should reconcile the application of a value-added service fee with the Commission's authority to establish cost-based prices during the transition period.

(4) Contract terms. Pursuant to the Commission's existing default supply rule, MPC's default supply obligations extend beyond the end of the extended transition period. In order provide the most affordable supply service during the extended transition period, MPC might need to enter into contracts of five or more years. MPC's filing should discuss the tradeoffs and default supply effects of supply contracts with terms longer that the extended transition period.

(5) Returning loads. MPC should outline the terms and conditions under which customers, including industrial, could return to regulated supply service during the extended transition period if they have previously switched to a competitive supplier. MPC should

address reasonable notice requirements prior to allowing a customer to return and reasonable service terms once the customer returns.

(6) Rate design. MPC should discuss its proposals and/or views on appropriate rate structures for regulated electricity supply service during the extended transition period. This discussion should address whether costs will justify different prices for different customer classes, whether customers with demand meters should continue to be billed based on demand, and whether seasonal and blocked rate structures should continue.

(7) Supply portfolio. MPC should discuss the concept of applying a renewable portfolio standard for regulated electricity supply service provided during the extended transition period. The discussion should address how a portfolio standard might affect affordability if the standard were applied to all regulated service, and the potential for offering a separate “green” service option.

37. The effects of this order apply primarily to MPC. Montana-Dakota Utilities is subject to a separately defined transition period pursuant to § 69-8-201(3), MCA. The Commission’s authority to extend the transition period does not extend to rural electric cooperative utilities that have opted to open their distribution systems and offer customer choice. The Commission has allowed Energy Northwest, Inc., the successor utility to PacifiCorp, additional time to submit a modified transition plan that addresses the obligations inherited from PacifiCorp. ENI should incorporate the effect of the Commission’s action extending the transition period into its forthcoming modified transition plan.

38. Numerous proposals to change current laws governing electric restructuring will be discussed during the up coming legislative session, including several that would change the dates for customer choice and the end of the transition period. That the legislature may be discussing issues related to the Commission’s proposal to extend the transition period is not a reason for the Commission to delay action. If the Commission extends the transition period and the legislature enacts new laws affecting the transition period, those laws could supercede the Commission’s action. However, the ratepayers and restructuring utilities would be no worse off for the Commission's having acted at this time to extend the transition period. However, if the legislature does not make any changes to existing laws, or enacts laws that simply expand on what the Commission is already doing, the Commission, MPC and nonchoice customers will be

better off because of the Commission's action extending the transition period at this time. There is no "downside" risk associated with the Commission's decision.

Conclusions of Law

1. Pursuant to § 69-8-201(2), MCA, the Commission has the discretion to determine whether the deadline for the transition to choice may be extended from July 1, 2002, up to but not later than July 1, 2004. The Commission's determination must be based on a finding of one or more of the following: (1) implementation would not be administratively feasible; (2) implementation would materially affect the reliability of the electric system; or (3) Montana customers would be disadvantaged due to the lack of competitive electricity supply markets.

2. The Commission concludes as a matter of law that it is appropriate and necessary to extend the end of the transition period from July 1, 2002 to July 1, 2004. Certain customers could be disadvantaged due to the lack of competitive electricity supply markets if the transition period is not extended.

3. MPC has been established as the default supplier in ARM 38.5.6007.

4. In extending the transition period, the Commission is authorized by § 69-8-210(2), MCA, to establish cost-based electricity supply prices, based on market purchases by the utility, for all customers that do not have a choice of, or have not yet chosen, an electricity supplier. The Commission concludes that extending the transition period could provide important customer protection after July 2002, given the status of electricity supply markets in Montana and uncertainty over how markets will develop once the rate moratorium expires.

Order

WHEREFORE, the Commission extends the deadline for the transition to choice, i.e., the end of the transition period under Title 69, Chapter 8, MCA, from July 1, 2002 to July 1, 2004. As set forth in this Order, MPC must submit a compliance filing on or before January 19, 2001, outlining how it intends to fulfill its electricity supply obligations. The compliance filing must address, at a minimum, the issues outlined in this Order, ¶ 36.

DONE AND DATED this 19th day of December, 2000 by a vote of 5 – 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.